

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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DAVINDER SINGH,

Plaintiff,

- against -

RALPH C. MARESCO, et al.,

Defendants.  
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ORDER

04 CV 1439 (JG)

JOHN GLEESON, United States District Judge:

On May 23, 2007, United States Magistrate Judge Cheryl L. Pollak filed a report and recommendation (“R&R”) in this action, concluding that I should (1) dismiss this action as to defendant Beau Burtnick, (2) deny the plaintiff’s motion for a hearing on the question of subject matter jurisdiction, (3) grant the plaintiff’s motion to preclude Burtnick from presenting evidence at trial on the question of his liability, (4) grant the plaintiff’s motion to strike Burtnick’s pleadings, (5) deny the motion for default judgment against Burtnick, (6) deny the defendants’ motion to preclude the plaintiff from eliciting medical expert testimony at trial, and (7) deny the defendants’ motion to dismiss this action in its entirety. The plaintiff filed his objections to the R&R on July 2, 2007, and I denied an application by Ralph C. Maresco to respond to the objections on July 6, 2007.

Because I agree with Judge Pollak’s conclusion that the action should be dismissed as against Burtnick for want of proper service, I adopt that recommendation. This decision has two consequences. First, as Judge Pollak suggested, *see* R&R 7, it means the motion for a hearing about Burtnick’s citizenship should be denied as moot. Second, with Burtnick no longer a party to this action, it means there is no need to strike his answer or preclude

him from presenting evidence at trial about his liability. Of course, both remaining parties remain free to present evidence related to Burtnick, including testimony elicited from Burtnick himself.

I agree with the reasoning and conclusion of Judge Pollak's remaining recommendations. Accordingly, this action is dismissed as against Burtnick, the motion for default judgment as against Burtnick is denied, the motion to preclude the plaintiff from eliciting medical expert testimony at trial is denied, and the motion to dismiss this action in full is denied.

In his July 6, 2007 application to oppose the plaintiff's objections to the R&R, Maresco indicated his intention to file a motion for summary judgment. To the extent he still wishes to do so, he shall file an application for a pre-motion conference.

So ordered.

John Gleeson, U.S.D.J.

Dated: Brooklyn, New York  
August 30, 2007